

Remarks

Claims 44, 46-51, 55-57, 59-61, and 65-74 are pending. Claim 58 is canceled without prejudice. Claims 44, 46-51, 59-61, 65 and 66 have been withdrawn from consideration as being drawn to a non-elected invention.

Claim 55 has been amended to recite that the delivery system comprises “a plurality of particles, wherein the particles are electrostatic, have a diameter ranging from 10 nanometers to 10 microns particles . . .” Support for this amendment can be found on page 12, 28-31 and page 13, lines 1-6. Withdrawn claim 44 has been amended to incorporate all of the amendments to claim 55.

Claims 59-61 have been amended to recite the “implant . . .” rather than the “method . . .” in the preamble. As these claims depend directly or indirectly from claim 55, which is directed to an implant rather than a method, this amendment is correcting an obvious error. Moreover, the claims as amended are properly included within the elected subject matter (Group II elected in the Response filed May 17, 2010). Applicants have therefore changed the claim designation from “withdrawn” to “currently amended” for claims 59-61 and respectfully request consideration or clarification.

Claims 69 has been amended to replace reference to angiogenic/vasculogenic factors and bone marrow recruiting factors with the term “cytokines.” Support for this amendment can be found on page 24, lines 9-11. Withdrawn claims 44 and 48 are similarly amended.

Claim 71 has been amended to correct a grammatical error.

Withdrawn claim 46 has been amended to depend from withdrawn claim 44 for proper antecedence.

Applicants note that all of the prior art rejections were withdrawn in the Office Action mailed on January 14, 2011, due to Applicants' prior claim amendments. The above amendments should place the claims in condition for allowance. According to M.P.E.P. § 714.12, "any amendment," including an after-final amendment, "that will place the application either in condition for allowance or in better form for appeal may be entered." Applicants therefore respectfully request that the claim amendments be entered.

Applicants further note that withdrawn claim 44 has been amended to recite all of the limitations of claim 55. Applicants therefore respectfully request rejoinder under M.P.E.P. § 821.04(b) of method claims 44, 46-51, 57, 59-61, 65 and 66, and allowance of claims 44, 46-51, 55-57, 59-61, and 65-74.

Summary of Interview

Applicants would like to thank Examiner Kim for his comments during the telephone interview of April 13, 2011, to discuss the Office Action mailed January 14, 2011. Examiner Kim acknowledged that amending claim 55 to recite "wherein the plurality of particles are electrostatic" should overcome the pending enablement rejection. As discussed on page 13, lines 1-6 of the specification, electrostatic interaction between the particles results in aggregates that are larger than the mesh pore size, which obviates the Examiner's concern about particle leakage. Applicants further agreed to amend claim 69 to provide correct antecedence with claim 55.

Rejection Under 35 U.S.C. § 112, second paragraph

Claim 69 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner noted that the limitations "the angiogenic/vasculogenic factors" and "the bone marrow recruiting factor" lack antecedent basis in claim 55 from which it depends. In response, Applicants have amended claim 69 to recite the "cytokines" of claim 55. Applicants

respectfully request entry of this amendment since it places the claim in condition for allowance or in better form for appeal and does not require a further search. Since claim 69 as amended is definite, Applicants respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. § 112, first paragraph

Claims 55-57 and 67-74 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly not being enabled. Specifically, the Examiner posited that since the pore size of the pouch in claim 55 should be sufficiently large enough to allow movement of progenitor cells into the implant, particles ranging from 10 nm to 10 μ m as recited in claim 55 would be smaller than the pore size and therefore would leak or escape through the pores. Applicants respectfully traverse this rejection to the extent that it applies to the claims as amended.

It is noted on page 13, lines 1-6 of the specification that the particles are generally electrostatic and prefer to aggregate with each other. Consequently, “[p]article size may be much smaller than the pore size of the external housing without loss of the particles” (page 13, lines 1-6).

In order to facilitate prosecution, Applicants have amended claim 55 to recite “wherein the particles are electrostatic.” Applicants respectfully request entry of this amendment since it places the claim in condition for allowance or in better form for appeal and does not require a further search. Electrostatic particles can be smaller than the pore size and still be suitable for use in the claimed implants. The person having ordinary skill in the art would therefore be able to practice the full scope of the claims without undue experimentation. Therefore, claims 55-57, 59-61 and 67-74 as amended are enabled. Applicants therefore respectfully request the withdrawal of this rejection.

Conclusion

Applicants believe the claims should now be in condition for allowance. However, if any issues remain, Applicants respectfully request a telephone interview with the Examiner prior to issuance of a further Office Action.

Applicants respectfully request allowance of claims 44, 46-51, 55-57, 59-61, and 65-74, as amended.

Respectfully submitted,

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Date: April 13, 2011

/Candace C. Andrews/

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